

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARCUS SULLIVAN,

Petitioner,

v.

**WARDEN, ROSS CORRECTIONAL
INSTITUTION,**

Respondent.

**CASE NO.: 2:09-CV-115
JUDGE SMITH
MAGISTRATE JUDGE KING**

OPINION AND ORDER

On August 17, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. *Report and Recommendation*, Doc. No. 12. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. *Objections*, Doc. No. 17. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner asserted in the petition that the evidence was constitutionally insufficient to sustain his conviction on attempted murder and felonious assault because the State failed to prove the requisite mental element, and because it was another person who was found to be in possession of the firearm from which some of the bullets had been fired. The Magistrate Judge recommended that the latter argument be dismissed as waived, due to petitioner's failure to present such claim to the Ohio courts, and that the former argument be dismissed on the merits. Petitioner objects to these recommendations. Specifically, petitioner disputes the factual findings of the state appellate court

and insists that he fairly presented both of his arguments to the Ohio courts. *See Objections.*

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Upon review of the record, this Court is not persuaded that petitioner's objections to the *Report and Recommendation* are meritorious or that habeas relief is warranted. Petitioner has failed to meet his burden of establishing that any of the factual findings of the state appellate court are incorrect, *see* 28 U.S.C. § 2254(e), nor does he indicate which of those findings he disputes. Moreover, petitioner has failed to establish that the Ohio Court of Appeals unreasonably applied *Jackson v. Virginia*, 443 U.S. 307 (1979), in rejecting his claim of insufficiency of the evidence.

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

THE CLERK SHALL ENTER FINAL JUDGMENT.

/s/ George C. Smith

GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT